IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

CRL.A.No. 724 of 2000()

ST.1088/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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APPELLANT: COMPLAINANT:

UNNIKRISHNAN, 38 YEARS,
S/O.PAIPOTH GOVINDANKUTTY,
CHERPU VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS: ACCUSED & STATE:

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1. RAMESAN, S/O.KOOVAKATTIL APPU,
   KOOVAKATTIL HOUSE, CHAPPARA DESOM,
   PULLOOT VILLAGE, PULLOOT P.O.,
   KODUNGALLUR TALUK, THRISSUR DISTRICT.

2. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.
BY ADV. SRI.K.A.JALEEL
SRI.C.ANILKUMAR (KALLESSERIL)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 724 OF 2000

Dated this the 21st March, 2007.

J U D G M E N T

The complainant in S.T.No.1088 of 2000, on the file of the Judicial First Class Magistrate Court, Kodungallur, is the appellant. He preferred a complaint under Section 138 of the Negotiable Instruments Act, against the first respondent, accused. On the appointed date, 7.7.2000, the complaint was dismissed, as the complainant, as well as his counsel were absent. The accused, was therefore, acquitted. Hence, the appeal on obtaining leave of this Court.

2. Counsel appearing for the appellant submits that the date of posting was noted wrongly by the clerk of the advocate in the lower court, and, therefore, there was no representation, when the case was taken up, on the appointed date, 7.7.2000. Except the above submission, there is no material to prove the same. Not even an affidavit is preferred by the clerk of the Advocate to show that he has committed the bona fide mistake on noting the date wrongly. These facts show the complete lapse on the part of the Advocate who

was appearing before the court below, and it appears that the advocate clerk is made only a scapegoat for the entire matter. Nevertheless, in order to save the complainant from being put into difficulties, for the lapse on the part of the advocate or his office, I am not taking a hard stand in this case. I am of the opinion that an opportunity be given to the parties to agitate the matter on merit.

3. In the result, the appeal is allowed. The impugned order, dated 7.7.2000, is set aside. S.T.No.1088/2000 is restored to the file of the Judicial First Class Magistrate Court, Kodungallur.

4. The parties shall appear before the court below on 26.4.2007.

5. The learned Magistrate shall dispose of the matter, at the earliest, and in any case, within four months from the date of appearance of the parties, as the complaint being of the year 2000, and pending so long.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 724 of 2000

J U D G M E N T

Dated: 21st March, 2007.